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2  
3 UNITED STATES DISTRICT COURT  
4 DISTRICT OF NEVADA

5 \* \* \*

6 JERAMIE CARLSSON,

Case No. 3:17-cv-00120-MMD-WGC

7 Petitioner,

ORDER

8 v.

9 TIMOTHY FILSON, *et al.*,

10 Respondents.  
11

12 **I. SUMMARY**

13 Petitioner Jeramie Carlsson filed a petition for writ of habeas corpus under 28  
14 U.S.C. § 2254. This matter is before the Court for adjudication of the merits of the  
15 remaining grounds in the petition. For the reasons discussed below, the Court denies the  
16 petition, denies a certificate of appealability, and directs the Clerk of Court to enter  
17 judgment accordingly.

18 **II. BACKGROUND**

19 Carlsson's convictions are the result of events that occurred in Washoe County,  
20 Nevada on or about May 9 and 10, 2012. (ECF No. 12-3.) During the grand jury  
21 proceeding, Martin Culp testified that he noticed a vehicle had crashed into a rock on  
22 his way to Truckee Meadows Community College. (ECF No. 12-2 at 5-7.) Culp pulled  
23 his vehicle over to aid the individuals, one of whom was Carlsson, who were standing  
24 outside the vehicle. (*Id.* at 7-8.) Carlsson approached Culp's vehicle and opened the  
25 driver's door, asking Culp to give him a ride for some money. (*Id.* at 8.) When Culp  
26 refused, indicating that he had a class to go to, Carlsson leaned into Culp's vehicle, and  
27 when Culp pushed him out, Carlsson "punched [Culp] in the face and tried to grab the  
28 keys" to the vehicle. (*Id.* at 9.) Culp and Carlsson "started to struggle for the keys, and

1 at that point, [Carlsson] acted like he had a gun” by “lift[ing] up his shirt.” (*Id.*) Culp “didn’t  
2 see anything,” but it was his impression that Carlsson had a gun. (*Id.* at 9-10.) Carlsson  
3 then instructed the other individuals to put some cases in the bed of Culp’s truck, threw  
4 Culp out of the vehicle, got in Culp’s vehicle with the other individuals, and drove away.  
5 (*Id.* at 10-11.)

6 Michael Mulkey, an acquaintance of Carlsson, testified before the grand jury that  
7 he ran into Carlsson at the Grand Sierra Resort and Hotel while Carlsson was “out  
8 running around dropping off dope” and agreed to accompany Carlsson to a storage unit.  
9 (*Id.* at 16-18.) Carlsson, Mulkey, and two females eventually ended up near Truckee  
10 Meadows Community College and went “four-wheeling . . . up the side of the mountain.”  
11 (*Id.* at 19.) Mulkey testified that Carlsson had a .40-caliber pistol in his waistband and a  
12 rifle and shotgun in his vehicle. (*Id.* at 19-20.) Carlsson hit a rock while “four-wheeling”  
13 and told his passengers that he was “going to offer somebody a hundred dollars to use  
14 their vehicle.” (*Id.* at 21.) Later, after Carlsson approached an individual driving a truck,  
15 Mulkey, at Carlsson’s instruction, moved a rifle, shotgun, and other bags from Carlsson’s  
16 vehicle to other individual’s truck, and Carlsson, Mulkey and the two females got into  
17 the other’s individual’s truck and drove away. (*Id.* at 22.) They went to a trailer park,  
18 Mulkey unloaded the weapons and other bags, and then Carlsson indicated that he was  
19 going to take the individual’s truck back. (*Id.* at 22-23.) When Carlsson returned, he  
20 borrowed a sedan, and Carlsson, Mulkey and one of the females went to the Western  
21 Village Inn and Casino so that Carlsson could “drop off some dope.” (*Id.* at 23-24.) After  
22 leaving the Western Village Inn and Casino, a police officer tried to pull the sedan over,  
23 but Carlsson sped away. (*Id.* at 25.) When Carlsson eventually stopped the vehicle, after  
24 evading the police officer, Mulkey got out of the vehicle and, as he was walking away,  
25 was apprehended by law enforcement and arrested. (*Id.* at 26-27.)

26 Detective Sergeant Aaron Leary testified before the grand jury that the damaged  
27 vehicle left near Truckee Meadows Community College had paperwork in it indicating  
28 that the vehicle belonged to Carlsson. (*Id.* at 40-41.) That paperwork included a room

1 registration for the Western Village Inn and Casino. (*Id.* at 41.) Detective Leary went to  
2 that location and observed a vehicle that he suspected was driven by Carlsson. (*Id.* at  
3 30, 33-34.) When Detective Leary activated his emergency lights, the vehicle turned into  
4 an apartment complex and then accelerated quickly through a school zone. (*Id.* at 35.)  
5 Because there was a lot of traffic and pedestrians present outside of the school,  
6 Detective Leary discontinued his pursuit of Carlsson “in an effort to slow him down.” (*Id.*  
7 at 36.)

8       Officer Byron Cragg testified before the grand jury that he received information  
9 that Carlsson was located at a La Quinta Inn. (*Id.* at 43-44.) Carlsson was located by  
10 law enforcement and proceeded to run from those law enforcement officers. (*Id.* at 45.)  
11 Carlsson jumped a fence, discarded his backpack, and started running again. (*Id.* at 46-  
12 47.) At that point, Officer Jones “deployed [a] less lethal round” that hit Carlsson in the  
13 leg, causing him to the fall to the ground. (*Id.* at 47.) When Carlsson fell to the ground,  
14 a police K-9 attacked Carlsson’s right leg. (*Id.*) When Officer Cragg approached  
15 Carlsson, Carlsson “came up holding a knife” and “was going to strike the K-9” with the  
16 knife. (*Id.* at 47-48.) Officer Cragg grabbed Carlsson’s arm and told him to let go of the  
17 knife, but Carlsson refused. (*Id.* at 48.) Officer Cragg then broke Carlsson’s arm, and  
18 Carlsson dropped the knife. (*Id.* at 48-49.) After Carlsson was taken into custody, as an  
19 officer was taking pictures of Carlsson’s injuries, Carlsson spit on the officer. (*Id.* at 58.)  
20 A search of Carlsson’s backpack revealed 11.6 grams of methamphetamine. (*Id.* at 58-  
21 59.)

22       Carlsson was indicted on the following charges: robbery with the use of a firearm,  
23 battery with intent to commit robbery, trafficking in a controlled substance, resisting  
24 and/or obstructing and/or delaying a public officer with a dangerous weapon, eluding a  
25 police officer, and unlawful acts related to human excrement or bodily fluid. (ECF No.  
26 12-3.) Following plea negotiations, Carlsson pleaded guilty to robbery with the use of a  
27 firearm, resisting and/or obstructing and/or delaying a public officer with a dangerous  
28

1 weapon, and eluding a police officer.<sup>1</sup> (ECF Nos. 12-16, 12-17.) Carlsson was  
2 sentenced to 72 to 180 months for the robbery conviction with a consecutive 48 to 120  
3 months for the weapon enhancement; 19 to 48 months for the resisting and/or  
4 obstructing and/or delaying a public officer with a dangerous weapon conviction, to run  
5 consecutively to the robbery with the use of a firearm conviction; and 28 to 72 months  
6 for the eluding a police officer conviction, to run consecutive to the previous two  
7 convictions. (ECF No. 13 at 2-3.) Carlsson appealed, and the Nevada Supreme Court  
8 affirmed. (ECF No. 13-12.) Remittitur issued on January 13, 2014. (ECF No. 13-13.)

9 Carlsson filed a state habeas petition on February 28, 2014. (ECF No. 13-17.)  
10 Carlsson then filed a counseled, supplemental petition on July 3, 2014. (ECF No. 13-  
11 22.) Following an evidentiary hearing, the state district court denied the petition. (ECF  
12 Nos. 14, 14-1.) Carlsson appealed, and the Nevada Court of Appeals affirmed. (ECF  
13 No. 14-17.) Remittitur issued on July 18, 2016. (ECF No. 14-18.)

14 Carlsson filed his federal habeas petition on August 22, 2017. (ECF No. 9.)  
15 Respondents moved to dismiss the petition on October 5, 2017. (ECF No. 11.) Carlsson  
16 responded to the motion to dismiss and moved to file an amended petition. (ECF Nos.  
17 17, 18.) This Court denied Carlsson's motion to amend and granted, in part, Respondents'  
18 motion to dismiss. (ECF No. 25 at 1.) Specifically, this Court determined that Grounds  
19 1(b),<sup>2</sup> 2(b), and 3(a) were unexhausted. (*Id.* at 3.) Carlsson later abandoned Grounds  
20 1(b), 2(b), and 3(a). (ECF No. 26.) Respondents answered the remaining grounds in  
21 Carlsson's petition on October 22, 2018. (ECF No. 27.) Carlsson did not reply.

22 In his remaining grounds for relief, Carlsson asserts the following violations of his  
23 federal constitutional rights:

24 1(a). His trial counsel failed to mitigate his sentence.

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26 <sup>1</sup>In addition to other charges being dismissed, Carlsson avoided being charged as  
27 a major habitual criminal, which carried a potential life imprisonment sentence, by  
entering this plea. (ECF No. 14 at 45.)

28 <sup>2</sup>This Court mistakenly identified Ground 1(b) as Ground 1(a) in its order.

- 1 1(c). His trial counsel failed to present family members to speak on his  
2 behalf at sentencing.  
3 2(a). His trial counsel failed to secure a written agreement regarding his  
4 right to appeal the weapon enhancement.  
5 3(b). His trial counsel was ineffective for failing to obtain a written  
6 agreement regarding his right to appeal the weapon enhancement.

7 (ECF No. 9 at 3-7.)

### 8 **III. LEGAL STANDARD**

9 28 U.S.C. § 2254(d) sets forth the standard of review generally applicable in  
10 habeas corpus cases under the Antiterrorism and Effective Death Penalty Act  
11 (“AEDPA”):

12 An application for a writ of habeas corpus on behalf of a person in custody  
13 pursuant to the judgment of a State court shall not be granted with respect  
14 to any claim that was adjudicated on the merits in State court proceedings  
15 unless the adjudication of the claim --

16 (1) resulted in a decision that was contrary to, or involved an  
17 unreasonable application of, clearly established Federal law, as  
18 determined by the Supreme Court of the United States; or

19 (2) resulted in a decision that was based on an unreasonable  
20 determination of the facts in light of the evidence presented in the  
21 State court proceeding.

22 A state court decision is contrary to clearly established Supreme Court precedent, within  
23 the meaning of 28 U.S.C. § 2254, “if the state court applies a rule that contradicts the  
24 governing law set forth in [the Supreme Court’s] cases” or “if the state court confronts a  
25 set of facts that are materially indistinguishable from a decision of [the Supreme] Court.”  
26 *Lockyer v. Andrade*, 538 U.S. 63, 73 (2003) (quoting *Williams v. Taylor*, 529 U.S. 362,  
27 405-06 (2000), and citing *Bell v. Cone*, 535 U.S. 685, 694 (2002)). A state court decision  
28 is an unreasonable application of clearly established Supreme Court precedent within  
the meaning of 28 U.S.C. § 2254(d) “if the state court identifies the correct governing  
legal principle from [the Supreme] Court’s decisions but unreasonably applies that  
principle to the facts of the prisoner’s case.” *Id.* at 75 (quoting *Williams*, 529 U.S. at 413).  
“The ‘unreasonable application’ clause requires the state court decision to be more than

1 incorrect or erroneous. The state court's application of clearly established law must be  
2 objectively unreasonable." *Id.* (quoting *Williams*, 529 U.S. at 409-10) (internal citation  
3 omitted).

4 The Supreme Court has instructed that "[a] state court's determination that a  
5 claim lacks merit precludes federal habeas relief so long as 'fairminded jurists could  
6 disagree' on the correctness of the state court's decision." *Harrington v. Richter*, 562  
7 U.S. 86, 101 (2011) (citing *Yarborough v. Alvarado*, 541 U.S. 652, 664 (2004)). The  
8 Supreme Court has stated "that even a strong case for relief does not mean the state  
9 court's contrary conclusion was unreasonable." *Id.* at 102 (citing *Lockyer*, 538 U.S. at  
10 75); *see also Cullen v. Pinholster*, 563 U.S. 170, 181 (2011) (describing the standard as  
11 a "difficult to meet" and "highly deferential standard for evaluating state-court rulings,  
12 which demands that state-court decisions be given the benefit of the doubt" (internal  
13 quotation marks and citations omitted)).

#### 14 **IV. DISCUSSION**

15 Carlsson's remaining grounds for reliefs involve allegations that his trial counsel  
16 was ineffective. In *Strickland*, the Supreme Court propounded a two-prong test for  
17 analysis of claims of ineffective assistance of counsel requiring the petitioner to  
18 demonstrate (1) that the attorney's "representation fell below an objective standard of  
19 reasonableness," and (2) that the attorney's deficient performance prejudiced the  
20 defendant such that "there is a reasonable probability that, but for counsel's  
21 unprofessional errors, the result of the proceeding would have been different." *Strickland*  
22 *v. Washington*, 466 U.S. 668, 688, 694 (1984). A court considering a claim of ineffective  
23 assistance of counsel must apply a "strong presumption that counsel's conduct falls  
24 within the wide range of reasonable professional assistance." *Id.* at 689. The petitioner's  
25 burden is to show "that counsel made errors so serious that counsel was not functioning  
26 as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687.  
27 Additionally, to establish prejudice under *Strickland*, it is not enough for the habeas  
28 petitioner "to show that the errors had some conceivable effect on the outcome of the

1 proceeding.” *Id.* at 693. Rather, the errors must be “so serious as to deprive the  
2 defendant of a fair trial, a trial whose result is reliable.” *Id.* at 687. When the ineffective  
3 assistance of counsel claim is based on a challenge to a guilty plea, the *Strickland*  
4 prejudice prong requires the petitioner to demonstrate “that there is a reasonable  
5 probability that, but for counsel’s errors, he would not have pleaded guilty and would  
6 have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

7 Where a state district court previously adjudicated the claim of ineffective  
8 assistance of counsel under *Strickland*, establishing that the decision was unreasonable  
9 is especially difficult. See *Harrington*, 562 U.S. at 104-05. In *Harrington*, the United  
10 States Supreme Court instructed:

11 The standards created by *Strickland* and § 2254(d) are both “highly  
12 deferential,” [*Strickland*, 466 U.S. at 689]; *Lindh v. Murphy*, 521 U.S. 320,  
13 333, n.7, 117 S.Ct. 2059, 138 L.Ed.2d 481 (1997), and when the two apply  
14 in tandem, review is “doubly” so, *Knowles [v. Mirzayance]*, 556 U.S. 111,  
15 123 (2009)]. The *Strickland* standard is a general one, so the range of  
16 reasonable applications is substantial. 556 U.S., at 123, 129 S.Ct. at 1420.  
17 Federal habeas courts must guard against the danger of equating  
unreasonableness under *Strickland* with unreasonableness under §  
2254(d). When § 2254(d) applies, the question is not whether counsel’s  
actions were reasonable. The question is whether there is any reasonable  
argument that counsel satisfied *Strickland*’s deferential standard.

18 *Harrington*, 562 U.S. at 105; see also *Cheney v. Washington*, 614 F.3d 987, 995 (9th  
19 Cir. 2010) (internal quotation marks omitted) (“When a federal court reviews a state  
20 court’s *Strickland* determination under AEDPA, both AEDPA and *Strickland*’s deferential  
21 standards apply; hence, the Supreme Court’s description of the standard as doubly  
22 deferential.”).

23 The Court will address Carlsson’s remaining four grounds.

#### 24 **A. Grounds 1(a) and 1(c)**

25 In Ground 1(a), Carlsson argues that his federal constitutional rights were  
26 violated when his trial counsel failed to mitigate his sentence. (ECF No. 9 at 3.) In  
27 Ground 1(c), Carlsson argues that his federal constitutional rights were violated when  
28 his trial counsel failed to present family members to speak on his behalf at sentencing.

1 (Id.) In its order affirming the denial of Carlsson's state habeas petition, the Nevada  
2 Court of Appeals held:

3 Carlsson claims counsel was ineffective for failing to present witnesses in  
4 mitigation of sentence. Carlsson claims several family members would have  
5 testified about his character when he was not using methamphetamine.  
6 Carlsson fails to demonstrate prejudice because he fails to show there was  
7 a reasonable probability of a different outcome at sentencing had the  
8 witnesses been presented given the serious nature of the crimes and his  
9 prior criminal history. Therefore, the district court did not err in denying this  
10 claim.

11 (ECF No. 14-17 at 3.) The Nevada Court of Appeal's rejection of Carlsson's claim was  
12 neither contrary to nor an unreasonable application of clearly established law as  
13 determined by the United States Supreme Court.

14 Counsel's performance at the penalty phase is measured against "prevailing  
15 professional norms." *Strickland*, 466 U.S. at 688. And this Court "must avoid the  
16 temptation to second-guess [counsel's] performance or to indulge 'the distorting effects  
17 of hindsight.'" *Mayfield v. Woodford*, 270 F.3d 915, 927 (9th Cir. 2001) (citing *Strickland*,  
18 466 U.S. at 689). But "judicial deference to counsel is predicated on counsel's  
19 performance of sufficient investigation and preparation to make reasonably informed,  
20 reasonably sound judgments." *Id.* When challenging a trial counsel's actions in failing to  
21 present mitigating evidence during a sentencing hearing, the "principal concern . . . is  
22 not whether counsel should have presented a mitigation case[, but instead] . . . whether  
23 the investigation supporting counsel's decision not to introduce mitigating evidence . . .  
24 was itself reasonable." *Wiggins v. Smith*, 539 U.S. 510, 522-23 (2003) (emphasis in  
25 original).

26 Carlsson's trial counsel did not introduce any mitigating evidence at Carlsson's  
27 sentencing hearing. (See ECF No. 12-30.) Carlsson's trial counsel simply asked that the  
28 state district court "not . . . max out the defendant . . . on the[ ] various charges" and,  
instead, give Carlsson "some ray of hope and some amount of leniency." (*Id.* at 16-17.)  
Carlsson's trial counsel commented that Carlsson "is a relatively young man, and based



1 on the sentence that the court is going to likely impose, . . . he's going to be a whole lot  
2 older when he gets out." (*Id.* at 17.) Carlsson then addressed the state district court and  
3 commented:

4 [E]verything that [the State] said about me is true. Everything [Carlsson's  
5 trial counsel] said is true, too. I mean I just got out of prison. I was good for  
6 a year-and-a-half, granted, I did - - did good, everything I needed to do. I  
7 was working. I had a run-in with me and my girlfriend, and we ended up  
8 splitting up and I started using methamphetamine again. And everybody is  
9 well aware - - the officers, everybody knows how I get when I use - - when  
I use that drug, it's disregard for everything. I mean, I don't even care about  
myself at the time I'm doing anything, you know, I - - it's just running around  
with my head cut off, Your Honor.

10 I am, I ain't going to deny anything. I mean, I did not have a gun when the -  
11 - when the crime occurred, I didn't have it. I punched the victim. I did, Your  
Honor. But as far as a gun, I know better than, you know, messing with guns  
12 and stuff like that.

13 But when I get - - when I get high - - I mean, I'm not making no excuses for  
14 the court or anything like that. I'm here to accept responsibility for what I  
did, Your Honor.

15 It's a little - - I know your hands are tied as far as any kind of drug program  
16 or anything like that. Like, I need serious help. I really do. That's coming  
17 from deep in my heart. Something's got to give, because I'll - - if I ain't - - if  
I ain't back in front of you, I will be in a body bag, Your Honor. I mean, it's  
18 just - - something - - something's go to - - I've go to - - I've got to learn I  
can't - - I can't use drugs no more. I cannot. I mean, if I get high again, like  
19 right now, I am going to kill myself or, you know, or somebody else or - - it's  
just, I can't do it, Your Honor.

20 Like I said, I'm here to accept responsibility for what I did. I want to apologize  
21 to the community for the havoc I have wreaked. You know, I'm just - - if you  
22 can show me some kind of - - I am not going to ask for - - you know, you're  
going to be my judge, I am here to accept responsibility for my actions, Your  
23 Honor.

24 (*Id.* 23-24.)

25 Before imposing Carlsson's sentence, the state district court went through  
26 Carlsson's criminal history on the record, indicating that Carlsson had five prior felony  
27 convictions. (*See id.* at 25-27; *see also* ECF No. 16-1 (presentence investigation report  
28 showing that Carlsson had five felony convictions, one gross misdemeanor conviction,

1 and six misdemeanor convictions that resulted in a total of eight incarcerations).) The  
2 state district court then explained:

3 Mr. Carlsson, the days that you are getting breaks from courts, I would  
4 suggest to you, are over. The Court considers many things in deciding what  
5 an appropriate punishment is with a defendant. As both [the State] and  
6 [Carlsson's trial counsel] know, the court has to consider rehabilitation,  
7 community safety, punishment, and deterrence. Those are the four primary  
8 things that the Court looks at, at different levels and at different times in your  
9 criminal history.

10 And frankly, sir, at this point, your criminal history and what you did in this  
11 case, simply cry out that community safety needs to be primary, followed by  
12 punishment for what you did, and then subsequent to that, deterrence,  
13 deterring not only you from committing future crimes, but other people from  
14 behaving the way that you did.

15 And then finally, regarding rehabilitation. Mr. Carlsson, as you yourself  
16 stated, my hands are tied. There is no way I can give you a drug treatment  
17 program because you are going to the Nevada State Prison as a result of  
18 your guilty plea in Count No. 1, and I wouldn't have considered it anyway.

19 (ECF No. 12-30 at 27-28.)

20 A little over two years later, a post-conviction evidentiary hearing was held on  
21 Carlsson's state habeas petition. (See ECF No. 14.) Carlsson testified at that evidentiary  
22 hearing that he expected his family members to be present and to testify on his behalf  
23 at his sentencing hearing. (*Id.* at 61.) Carlsson explained that he arranged to have  
24 various witnesses—including his father, brother, daughter, daughter's mother, and  
25 previous supervisor—testify about his character at his original sentencing hearing date  
26 and that he told these witnesses to contact his trial counsel. (*Id.* at 65-68.) However, his  
27 original sentencing date was continued, so he gave his proposed witnesses' contact  
28 information to his trial counsel in order for his trial counsel to inform them of the new  
sentencing date. (*Id.* at 67-68.) Carlsson did not remember whether he informed his  
proposed witnesses personally about the new sentencing date. (*Id.* at 69.)

Carlsson's trial counsel also testified at the evidentiary hearing and explained  
that, in order to prepare for sentencing, he spoke with Carlsson, reviewed the file, and  
reviewed the presentence investigation report. (*Id.* at 39.) Carlsson's trial counsel did

1 not remember speaking with Carlsson's family members or asking Carlsson if any of his  
2 family members would be able to appear at the sentencing hearing. (*Id.*) Carlsson's trial  
3 counsel also did not remember why he did not use Carlsson's family members as  
4 sources of mitigating evidence at Carlsson's sentencing. (*Id.* at 50.)

5 Gary Curtis Shaffer, Carlsson's father, testified at the evidentiary hearing that  
6 Carlsson suffered from a methamphetamine addiction. (*Id.* at 51-52.) Shaffer explained  
7 that when Carlsson is not using methamphetamine, "he's a bright, very personable,  
8 really easygoing guy" who "makes friends very easy" and gets promoted quickly at work.  
9 (*Id.* at 52.) Shaffer further explained that when Carlsson is sober, he does not have  
10 problems with law enforcement and is "a good kid." (*Id.*) Carlsson's last job was at  
11 Hobey's Casino where he got many promotions. (*Id.*) When Carlsson started using  
12 methamphetamine again after separating from his significant other, "he disassociated  
13 himself [from family and] his daughter. He just isolated himself from everybody. Nobody  
14 knew where he really was, what he was doing." (*Id.* at 53.)

15 Because Carlsson's trial counsel did not remember why he did not present  
16 Carlsson's witnesses at the sentencing hearing, it is difficult to assess his alleged  
17 deficiency. *See Wiggins*, 539 U.S. at 522-23. However, even if Carlsson's trial counsel  
18 was deficient, the Nevada Court of Appeals reasonably determined that Carlsson fails  
19 to demonstrate prejudice. *See Strickland*, 466 U.S. at 694.

20 First, Carlsson's father's testimony about Carlsson's methamphetamine addiction  
21 and Carlsson's behavior when he is using and not using methamphetamine was similar  
22 to Carlsson's own statement during the sentencing hearing. (*Compare* ECF No. 14 at  
23 51-52, *with* ECF No. 12-30 at 23-24.) Further, the state district court was well aware of  
24 Carlsson's substance abuse history from the presentence investigation report. (ECF No.  
25 16-1 at 4.) Second, the state district court indicated at Carlsson's sentencing hearing  
26 that it was sentencing Carlsson primarily based on community safety concerns due to  
27 Carlsson's criminal history and his actions in this case. (ECF No. 12-30 at 27-28.)  
28 Carlsson's family members' and supervisor's proposed testimonies would have only

1 discussed Carlsson's character and would not have touched upon the state district  
2 court's primary sentencing concerns. Accordingly, Carlsson fails to demonstrate that  
3 "there is a reasonable probability that, but for" his trial counsel's potential failure to call  
4 witnesses at his sentencing hearing, "the result of the proceeding would have been  
5 different." *Strickland*, 466 U.S. at 694; *see also United States v. Berry*, 814 F.2d 1406,  
6 1409 (9th Cir. 1987) (denying an ineffective-assistance-of-counsel claim based on  
7 counsel's refusal to call witnesses because the defendant "offers no indication of . . .  
8 how their testimony might have changed the outcome of the hearing"). Indeed, this  
9 conclusion is supported by the state district court's statement in its order denying  
10 Carlsson's state habeas petition that it "was familiar with [Carlsson's] substance abuse  
11 and criminal history" and that "[h]ad [it] known everything allegedly not presented [at  
12 sentencing,] it would have reached the same result." (ECF No. 14-1 at 5.)

13 Moreover, regarding Carlsson's generic claim in Ground 1(a) that his trial counsel  
14 failed to mitigate his sentence, Carlsson fails to explain what mitigating evidence—  
15 beyond presenting character witnesses—or argument his trial counsel should have  
16 presented. This failure to support Ground 1(a) with specific allegations does not warrant  
17 the granting of relief. *See, e.g., Jones v Gomez*, 66 F.3d 199, 205 (9th Cir. 1995).

18 Because the Nevada Court of Appeals reasonably denied Carlsson's ineffective-  
19 assistance-of-counsel claim, Carlsson is denied federal habeas relief for Grounds 1(a)  
20 and 1(c).

### 21 **B. Grounds 2(a) and 3(b)**

22 In Grounds 2(a) and 3(b), Carlsson argues that his federal constitutional rights  
23 were violated when his trial counsel failed to secure a written agreement regarding his  
24 right to appeal a pre-plea weapon enhancement issue.<sup>3</sup> (ECF No. 9 at 5, 7.) In its order  
25

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26 <sup>3</sup>Respondents argue that Ground 3(b) should be dismissed because it is  
27 duplicative of Ground 2(a). (ECF No. 27 at 12.) In its order granting, in part, Respondents'  
28 motion to dismiss, this Court previously deferred ruling on this issue. (ECF No. 25 at 4.)  
Although Grounds 2(a) and 3(b) are identical, because they lack merit, this Court simply  
denies them.

1 affirming the denial of Carlsson's state habeas petition, the Nevada Court of Appeals  
2 held:

3 Carlsson claims counsel was ineffective for failing to preserve in writing his  
4 right to appeal whether there was sufficient evidence to support the grand  
5 jury's probable cause determination regarding the use of a deadly weapon.  
6 Carlsson fails to demonstrate he was prejudiced. While counsel failed to  
7 preserve the right to appeal in writing, Carlsson was able to appeal the issue  
8 and the Nevada Supreme Court issued a merit determination on that issue.  
9 *See Carlsson v. State*, Docket No. 63506 (Order of Affirmance, December  
10 16, 2013). Therefore, the district court did not err in denying this claim.

11 (ECF No. 14-17 at 3.) The Nevada Court of Appeal's rejection of Carlsson's claim was  
12 neither contrary to nor an unreasonable application of clearly established law as  
13 determined by the United States Supreme Court.

14 Following his indictment, Carlsson filed a pre-trial habeas petition, arguing that  
15 the grand jury did not have sufficient evidence to charge him with the deadly-weapon  
16 enhancement for robbery. (ECF No. 12-13.) Before the state district court could rule on  
17 that petition, Carlsson agreed to plead guilty to robbery with the use of a firearm,  
18 resisting and/or obstructing and/or delaying a public officer with a dangerous weapon,  
19 and eluding a police officer. (ECF Nos. 12-16, 12-17.) At the plea hearing, Carlsson's  
20 trial counsel explained that it was "reserving the right to appeal whether in fact there was  
21 sufficient evidence to show a firearm was used in this case." (ECF No. 12-16 at 5.)  
22 Carlsson's trial counsel also explained that "the right to appeal the weapons portion of  
23 the robbery [charge was] not included in the Guilty Plea Agreement, but that [it was] sort  
24 of a side agreement [he had] made with [the State] that [he] wanted to be part of the  
25 record." (*Id.* at 6.) Carlsson later moved to strike the deadly-weapon enhancement,  
26 arguing that he should only be sentenced for the underlying robbery. (ECF No. 12-20.)  
27 The state district court denied the motion at Carlsson's sentencing hearing. (ECF No.  
28 12-30 at 10.)

Carlsson appealed his judgment of conviction, and the Nevada Supreme Court  
held:

1 Appellant Jeramie Raymond Carlsson contends that the district court erred  
2 by denying his pretrial petition for a writ of habeas corpus because there  
3 was insufficient evidence to support the grand jury's determination that he  
4 used a firearm to commit the robbery. Although the transcript of the district  
5 court's plea canvass clearly reflects that Carlsson entered a conditional  
6 guilty plea with the consent of the district court and district attorney,  
7 Carlsson did not reserve his right to appeal from the judgment of conviction  
8 *in writing* as is required by NRS 174.035(3). Even if this issue had been  
9 properly preserved, Carlsson would not be entitled to relief. The transcript  
10 of the grand jury proceeding demonstrates that there was sufficient  
11 evidence to support the grand jury's probable cause determination. See  
12 NRS 172.155(1); *Sheriff v. Hodes*, 96 Nev. 184, 186, 606 P.2d 178, 180  
13 (1980) ("The finding of probable cause may be based on slight, even  
14 'marginal' evidence because it does not involve a determination of the guilt  
15 or innocence of an accused." (internal citations omitted)).

16 (ECF No. 13-12 at 2-3 (emphasis in original) (internal footnote omitted).)

17 Carlsson later testified at the post-conviction evidentiary hearing that it was his  
18 intention to appeal the deadly-weapon enhancement of his robbery conviction because  
19 he denied having a firearm when he robbed Culp. (ECF No. 14 at 54-56.) Carlsson  
20 explained that when he entered his guilty plea to robbery with the use of a firearm, he  
21 expected that the deadly weapon enhancement issue would be appealed after  
22 sentencing and would get overturned. (*Id.* at 59.)

23 Carlsson's trial counsel explained at the post-conviction evidentiary hearing that  
24 when he told the State that Carlsson was going to accept the plea deal, Carlsson's trial  
25 counsel indicated to the State that his "client would still like to be able to litigate the issue  
26 with respect to the weapon," to which the State responded, "I don't care." (*Id.* at 27.)  
27 Carlsson's trial counsel then explained that he "thought by making the record at the time  
28 of the entry of plea" and filing the motion to strike the enhancement, he was preserving  
the issue for appellate review. (*Id.* at 27, 32.) However, Carlsson's trial counsel admitted  
that he "may have been remiss in not asking for a continuance so [the right to appeal  
the deadly weapon enhancement issue] could be in the written language of the plea  
agreement." (*Id.* at 26.) Carlsson's trial counsel also admitted that he could not think of

1 a reason why he did not have the State sign a written agreement to retain the  
2 appealability of the deadly weapon enhancement issue. (*Id.* at 32-33.)

3 At the post-conviction evidentiary hearing, the prosecutor in Carlsson's case  
4 confirmed that there was an agreement between the State and Carlsson's trial counsel  
5 that Carlsson "was going to enter his guilty plea to that charge but he was free to litigate  
6 that issue beyond the district court level." (ECF No. 14 at 7, 10.) The prosecutor  
7 explained that he did not include Carlsson's right to appeal the deadly weapon  
8 enhancement issue in the plea memorandum because Carlsson's trial counsel "didn't  
9 ask [him] to put in in there and [he] didn't think it was important." (*Id.* at 13.)

10 As Carlsson's trial counsel explained at the evidentiary hearing, "the entry of a  
11 guilty plea traditionally waives non-jurisdictional issues that arise prior to the entry of the  
12 plea." (ECF No. 14 at 47.) As Carlsson's trial counsel and the prosecutor in Carlsson's  
13 case both testified, there was a verbal agreement in place reserving Carlsson's right to  
14 appeal the deadly weapon enhancement issue to avoid this waiver. (*Id.* at 10, 27.)  
15 However, Carlsson's trial counsel failed to seek to include the reservation of this right in  
16 the plea agreement or in a written document, instead opting to put the verbal agreement  
17 on the record. (*Id.* at 27.) As the Nevada Court of Appeals reasonably noted, Carlsson's  
18 trial counsel erred in this regard. See NRS § 174.035(3) ("With the consent of the court  
19 and the district attorney, a defendant may enter a conditional plea of guilty, . . . reserving  
20 *in writing* the right, on appeal from the judgment, to a review of the adverse  
21 determination of any specified pretrial motion." (Emphasis added)).

22 However, even if Carlsson's trial counsel was deficient in failing to reserve  
23 Carlsson's right to appeal in writing, the Nevada Court of Appeals also reasonably held  
24 that Carlsson fails to demonstrate prejudice. See *Strickland*, 466 U.S. at 688, 694. As  
25 the Nevada Court of Appeals reasonably explained, the Nevada Supreme Court—  
26 regardless of the error made by Carlsson's trial counsel—addressed the merits of  
27 Carlsson's claim that there was insufficient evidence to support the grand jury's  
28 determination that he used a firearm to commit the robbery in his direct appeal. (See

1 ECF No. 13-12 at 2-3.) Therefore, Carlsson fails to demonstrate that “there is a  
2 reasonable probability that, but for” his trial counsel’s failure to reserve his right to appeal  
3 in writing, “the result of the proceeding would have been different,” since the Nevada  
4 Supreme Court addressed the issue on appeal notwithstanding the error. *Strickland*,  
5 466 U.S. at 694.

6 Because the Nevada Court of Appeals reasonably denied Carlsson’s ineffective-  
7 assistance-of-counsel claim, Carlsson is denied federal habeas relief for Grounds 2(a)  
8 and 3(b).

9 **V. CERTIFICATE OF APPEALABILITY**

10 This is a final order adverse to Carlsson. As such, Rule 11 of the Rules Governing  
11 Section 2254 Cases requires this Court to issue or deny a certificate of appealability  
12 (COA). Therefore, this Court has *sua sponte* evaluated the claims within the petition for  
13 suitability for the issuance of a COA. See 28 U.S.C. § 2253(c); *Turner v. Calderon*, 281  
14 F.3d 851, 864-65 (9th Cir. 2002). Pursuant to 28 U.S.C. § 2253(c)(2), a COA may issue  
15 only when the petitioner “has made a substantial showing of the denial of a constitutional  
16 right.” With respect to claims rejected on the merits, a petitioner “must demonstrate that  
17 reasonable jurists would find the district court’s assessment of the constitutional claims  
18 debatable or wrong.” *Slack v. McDaniel*, 529 U.S. 473, 484 (2000) (citing *Barefoot v.*  
19 *Estelle*, 463 U.S. 880, 893 & n.4 (1983)). Applying this standard, the Court finds that a  
20 certificate of appealability is unwarranted.

21 **VI. CONCLUSION**

22 It is therefore ordered that the Petition for a Writ of Habeas Corpus Pursuant to 28  
23 U.S.C. § 2254 (ECF No. 9) is denied.

24 It is further ordered that Petitioner is denied a certificate of appealability.

25 The Clerk of Court is directed to enter judgment accordingly and close this case.

26 DATED THIS 14<sup>th</sup> day of April 2020.

27   
28 MIRANDA M. DU  
CHIEF UNITED STATES DISTRICT JUDGE